

LICENSE COMMISSION

Bring Your Own Bottle Regulation

"Carry-In" Intoxicating Beverages Policy

1. Definitions

For purposes of this Policy, the following terms shall have the following meanings:

"Board" shall mean the Board of Selectmen acting as the Town's local licensing authority for common victuallers under M.G.L. Chapter 140.

"Policy" shall mean this Policy applicable to Carry-In Permit for intoxicating beverages to restaurants operated by common victuallers.

"Carry-In Permit" shall mean permission granted by the Board to a common victualler under this Policy to allow intoxicating beverages to be brought by patrons and customers into and consumed in a restaurant which is owned, operated, leased, maintained or otherwise controlled by the common victualler.

"Common Victualler" shall mean a person duly licensed under the provisions of M.G.L. Chapter 140 to conduct a restaurant.

"Intoxicating Beverages" shall mean intoxicating beverages as defined in M.G.L. Chapter 138, §1.

"Restaurant" shall mean a restaurant as defined in M.G.L. Chapter 138, §1.

"TIPS" shall mean Training for Intervention ProcedureS.

2. General Rules

No common victualler shall permit intoxicating beverages to be consumed in a restaurant which is owned, operated, leased, maintained or otherwise controlled by the common victualler except pursuant to a valid license issued under the provisions of M.G.L. Chapter 138, or pursuant to and in strict conformity with this Policy and regulations adopted by the Board pursuant to this Policy.

3. Carry-In Permit for Intoxicating Beverages

The Board may grant Carry-In Permit to a common victualler to allow intoxicating beverages to be brought by patrons and customers into and consumed in a restaurant which is owned, operated, leased, maintained or otherwise controlled by the common victualler provided that:

a. Application for such Carry-In Permit shall be made to the Board at the time of the initial or renewal application for a common victualler's license.

b. The applicant for such Carry-In Permit shall not be less than twenty-one years of age and must be a person of good character in the Town.

c. No Carry-In Permit shall be issued to any applicant who has been convicted of a violation of a federal or state narcotic drugs law.

d. No Carry-In Permit shall be issued to any fast food restaurant, which is part of a restaurant chain or franchise.

e. No Carry-In Permit shall be issued to any applicant who has a license for the restaurant issued under the provisions of M.G.L. Chapter 138.

f. No Carry-In Permit shall be issued to any applicant whose license for the restaurant issued under the provisions of M.G.L. Chapter 138 has been suspended or revoked, or to any person, firm, corporation, association or other combination of persons affiliated, directly or indirectly, with such licensee through any agent, employee, stockholder, officer or other person, or any subsidiary whatsoever.

g. Before approving or renewing Carry-In Permit, the Board may cause an examination or examinations to be made of the premises of the applicant or may otherwise review such evidence as the Board deems credible to determine whether such premises comply in all respects with the appropriate definitions of section one and whether activities conducted on the premises comply in all respects with the provisions of this Policy. The Board may deny Carry-In Permit or renewal of Carry-In Permit to any applicant where the premises and/or the activities conducted on the premises do not in the Board's judgment so comply.

h. The Board may refuse to grant Carry-In Permit in certain geographical areas of the Town, where the character of the neighborhood may warrant such refusal or when not allowed as a permitted use under a Special Permit or Zoning Bylaw.

i. The common victualler shall comply with any and all conditions imposed by the Board with respect to such Carry-In Permit, including without limitation conditions with respect to hours and days during which such intoxicating beverages may be consumed in the restaurant and the insurance which shall be carried with respect to operation of the restaurant having Carry-In Permit.

j. Carry-In Permit under this Policy shall be not be transferable between persons or locations except with the advance permission of the Board and then only if consistent with the public interest. Carry-In Permit shall be revocable as provided herein.

k. Approval of Carry-In Permit under this Policy shall not create any property rights; rather such permission is authorized solely to serve the public need and in such a manner as to protect the common good.

l. Every approval of Carry-In Permit under the provisions of this Policy shall expire on December thirty-first of the year of issue, subject, however, to earlier revocation or cancellation within its term.

4. Obligations of A Common Victualler Granted Carry-In Permit for Intoxicating Beverages.

Any common victualler approved for Carry-In Permit shall at all times comply with the following requirements: (it is recommended that the Common Victualler attends a Training for Intervention ProcedureS (TIPS)) Program and acknowledge that obtaining TIPS certification is their responsibility.

a. The common victualler shall not permit any person under the age of twenty-one to consume intoxicating beverages in the restaurant. Any person bringing or accompanying any person bringing intoxicating beverages into a restaurant having Carry-In Permit shall, upon request of the common victualler, a Lunenburg police officer, or an agent of the Board, state his name, age, and address, and produce a valid identification document. The common victualler shall verify by appropriate picture identification that any patrons and customers consuming such intoxicating beverages in the restaurant are twenty-one years of age or older. Any common victualler, or agent or employee thereof, under this Policy who reasonably relies on a valid operator's license issued by the registry of motor vehicles pursuant to M.G.L. Chapter 90, §8, a valid liquor purchase identification card issued pursuant to M.G.L. Chapter 138, §34B, a valid passport issued by the United States government or by the government of a foreign country recognized by the United States government, or a valid United States issued military identification card, for proof of a person's identity and age shall not suffer any modification, suspension, revocation or cancellation of its Carry-In Permit or common victualler's license by virtue of that individual's under-age drinking in the restaurant.

b. The common victualler shall only allow intoxicating beverages to be consumed in the dining room or dining rooms of the restaurant, and is responsible for sealing and wrapping the open container before the patron exits the establishment.

c. The common victualler shall ensure that intoxicating beverages are not consumed in the restaurant by customers or patrons so as to cause or contribute to their becoming unruly and/or a danger to themselves or others either in the restaurant or on the public ways upon leaving the restaurant. The common victualler is hereby authorized to confiscate all remaining intoxicating beverages from any patrons or customers who appear to present a danger of becoming unruly and/or becoming a danger to themselves or others either in the restaurant or on the public ways by virtue of the consumption of intoxicating beverages. Any customers or patrons of a restaurant with Carry-In Permit shall be deemed at all times to consent to such confiscation if deemed necessary by the common victualler.

d. The common victualler shall immediately report to the Lunenburg Police Department any situation in which customers or patrons consuming alcohol in the restaurant appear to present a danger to themselves or others either in the restaurant or on the public ways by virtue of the consumption of intoxicating beverages.

5. Regulations

The Board may promulgate rules and regulations consistent with the provisions of this Policy for clarifying, carrying out, enforcing, implementing and preventing violations of, all and any of its provisions. Without limitation, the Board may make regulations (a) limiting the number of approvals for Carry-In Permit to be issued under this Policy, (b) determining the fee to be charged for Carry-In Permit under this Policy, which fee shall not be more than double the license fee for a common victualler's license, (c) determining the method and frequency of inspection of the premises and method of carrying on the business of any common victualler having Carry-In Permit hereunder, and (d) for the proper and orderly conduct of any business having Carry-In Permit hereunder.

6. Penalties for Violation

Violation by a common victualler of this Policy or any regulation promulgated by the Board pursuant to this Policy shall be punishable by a fine of one hundred dollars for the first offense, any further violations will result in a fine of three hundred dollars (\$300) per offense. Each day a violation continues shall be considered a separate offense.

Any person bringing intoxicating beverages into or consuming intoxicating beverages in a restaurant having Carry-In Permit shall be punished by a fine of three hundred dollars per offense for any of the following violations of this Policy: (a) refusing, upon request of the common victualler, a Lunenburg police officer, or an agent of the Board, to state his name, age, and address, and produce a valid identification document, (b) stating in response to such request a false name, age, or address, including a name or address which is not his name or address in ordinary use, (c) producing or displaying in response to such request a false or fraudulent identification document, (d) refusing to allow the common victualler to confiscate remaining intoxicating beverages under Section 4(c), or (e) acting in a manner dangerous to himself or others in the restaurant. Any sums of money collected as fines shall be paid forthwith into the general revenues of the Town.

7. Suspension, etc., of Carry-In Permit

The Board may suspend, modify, cancel, deny, refuse to renew, or revoke Carry-In Permit for any violation of this Policy or any regulation promulgated by the Board pursuant to this Policy. The Board may suspend, modify, cancel, deny, refuse to renew, or revoke a common victualler's license in the event a common victualler has committed multiple, willful, or repeated violations of this Policy or any regulation promulgated by the Board pursuant to this Policy. In case of suspension, modification, cancellation, denial, refusal to renew, or revocation of any Carry-In Permit or any license as aforesaid, no abatement or refund of any part of the fee paid therefor shall be made.

8. Severability

In case any section, paragraph or part of this chapter be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

9. Effective Date

This Policy shall take effect March 10, 2009.

SUMMARY

Currently, the Board of Selectmen has statutory authority to issue liquor licenses and common victualler licenses. It has been determined that state law does not prevent or adequately regulate "BYOB" activity. The proposed Policy would allow the Board of Selectmen to regulate "BYOB" restaurants in the Town, would set minimum standards for common victuallers engaged in this activity, would empower the Board to prohibit this activity in certain neighborhoods, and would establish penalties for violations.